

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0021P

Sales Tax

Calendar Years 1998 & 1999

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a sales tax assessment resulting from a Department audit conducted for the calendar years 1998 and 1999.

The taxpayer is a diagnostic center that provides x-ray treatment for patients in Northwest Indiana. The taxpayer is located in Indiana. The taxpayer files as a partnership and is a limited liability company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty assessment be waived based on the fact the taxpayer is a new company and the error was unintentional. The Department points out the taxpayer had no company policies or procedures on which to pay use tax on purchases, particularly large out-of-state purchases. The Department also points out the assessment is significant.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness,

thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer did not act with reasonable care in that the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer’s penalty protest is denied.

FINDING

The taxpayer’s penalty protest is denied.